

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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August 3, 2000

Memo to Counsel Re: William Cooper v. Smith & Nephew, Inc.
Civil No. JFM-97-2578

Dear Counsel:

I have reviewed the papers submitted in connection with plaintiff's motion to file sur-reply memorandum and defendant's motion in opposition and motion to strike the deposition of Dr. Murphy. Plaintiff's motion will be denied and defendant's motions will be granted.

Plaintiff's contention that the June 21 "Statement Under Oath" is "technically an affidavit" is without merit. Regardless of the heading attached to the transcript, it is clear that Dr. Murphy's statements were made during the course of a deposition and not as part of an affidavit. The meeting between plaintiff's counsel and Dr. Murphy was "[a] a discovery device by which one party ask[ed] oral questions of . . . a witness for the other party." Black's Legal Dictionary 396 (5th ed. 1979). Thus, plaintiff conducted a deposition and was obligated to provide defendant with notice pursuant to Fed. R. Civ. P. 30(b)(1). Plaintiff did not satisfy the notice requirement by requesting permission to file a sur-reply.

Plaintiff questions the probative value of Dr. Murphy's May 25 affidavit in which he declares that his decisions regarding the bonescrew device were based on his independent medical judgment. Plaintiff contends that Dr. Murphy's more recent testimony casts doubt upon the reliability of the affidavit and that the sur-reply memorandum allows the statements to be placed in "context." While plaintiff remains free to properly challenge the probative value of the affidavit, he may not unilaterally extend discovery in search of evidence to bolster his claims.

Despite the informal nature of this ruling, it shall constitute an Order of Court, and the Clerk is directed to docket it accordingly.

Very truly yours,


J. Frederick Motz
United States District Judge

cc: Court File

